

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SIX**

BLAIR CORPORATION

Employer

and

**Case 6-RC-12358**

DISTRICT 65, INTERNATIONAL ASSOCIATION  
OF MACHINISTS & AEROSPACE WORKERS,  
AFL-CIO

Petitioner

**REGIONAL DIRECTOR'S DECISION AND ORDER**

The Employer, Blair Corporation, is engaged in the retail sale of men's and women's apparel and home products via telephone, mail, catalogs, flyers, inserts and the Internet. The Employer does not manufacture any of the merchandise it sells to customers and the general public. The Employer's operation consists of five facilities: Blair Corporate Headquarters located in Warren, Pennsylvania (BCO); Blair Distribution Center (North & South Buildings) located in Irvine, Pennsylvania (BDC); Blair Returns Center located in Erie, Pennsylvania (ERC); Blair Service Center located in Erie, Pennsylvania (ESC); and Blair Service Center located in Franklin, Pennsylvania (FSC). In addition, the Employer operates an outlet store in Grove City, Pennsylvania, a catalog outlet store in Wilmington, Delaware, and a photography studio in West Warren, Pennsylvania. The Petitioner, District 65, International Association of Machinists & Aerospace Workers, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a multi-facility unit of all full-time and regular part-time fulfillment department, maintenance department, customer service department, credit management department and information services

department employees employed at the BDC and the BCO, excluding confidential employees, office clerical employees, managerial employees and guards, professional employees and supervisors as defined in the Act.

Recently, in Case 6-RC-12339, the Petitioner sought to represent a single facility unit of all fulfillment department, maintenance department, credit management department and information services department employees at BDC. On June 8, 2004, I dismissed that petition on the ground that a unit limited to BDC was not an appropriate unit and that the Employer had rebutted the presumptive appropriateness of a single facility unit. In that case, the Employer argued that a five-facility unit encompassing all of its employees involved in its order filling process was the only appropriate unit, i.e. those employees employed in its fulfillment, maintenance, customer service, credit management and information services departments.<sup>1</sup> In dismissing the petition, I did not pass upon whether the five-facility unit espoused by the Employer was the only appropriate unit since the Petitioner, in that case, did not indicate a willingness to proceed to an election in any broader unit. The Petitioner did not file a request for review of my decision.

In this case, the Employer argues, contrary to the Petitioner, that the two facility petitioned-for unit is inappropriate and that the only appropriate unit is a five-facility unit encompassing all employees in the Employer's order flow process. In addition, the Employer contends, contrary to the Petitioner, that if the two facility unit is found to be appropriate, approximately 69 hourly clerical employees employed at BCO who are not directly engaged in the order flow process should nevertheless be included in the unit on the ground that they share a community of interest with the unit employees.<sup>2</sup>

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<sup>1</sup> No customer service department employees are employed at BDC.

<sup>2</sup> These employees are employed, inter alia, in advertising, finance, marketing, human resource and other positions. None of these employees are employed in the fulfillment, maintenance, customer service, credit management or information services departments.

Inasmuch as the parties desired to have an expeditious determination by me as to whether any unit limited to BCO and BDC is appropriate, and in order to reduce further expenses associated with a hearing in this case, the parties stipulated that (1) I am to make a determination as to whether a unit limited in geographical scope to the BCO and BDC is appropriate based upon the previously developed formal record in Case 6-RC-12339; (2) the parties waive their rights under the Board's Rules and Regulations to a hearing on the scope of the unit issue; (3) the parties have the opportunity to file briefs with me on the issues raised by the scope of the unit question;<sup>3</sup> (4) if I determine that a unit limited to BCO and BDC is appropriate, such a decision is interlocutory and not subject to review by the Board until a final decision is issued by me following a hearing on the unit composition issue described above; and (5) if I determine that the only appropriate unit is a five-facility unit, no further hearing will be ordered and my decision will be subject to review in accordance with the Board's Rules and Regulations.

The parties are in agreement that the following employees are properly included in the petitioned-for two facility unit: (1) approximately 590 fulfillment department employees, 50 maintenance department employees and 16 credit management department and information services department employees employed at the BDC; (2) approximately 320 customer service department employees, 29 maintenance department employees, 21 credit management department employees and 22 information services department employees employed at BCO, in all 1048 employees. There are no employees engaged in the order flow process at BDC and BCO whose unit placement is in dispute.<sup>4</sup> Further, there are approximately 390 employees at

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<sup>3</sup> Both parties filed briefs which I have considered in reaching my determination herein.

<sup>4</sup> The parties are in disagreement whether six building security employees at BDC and two building security employees at BCO should be excluded as guards within the meaning of the Act. The Employer contends, contrary to the Petitioner, that these employees are guards. In view of my determination herein on the scope of the unit, I deem it unnecessary to pass on this issue in this Decision.

ESC, 390 employees at FSC and 230 employees at ERC engaged in order filling process job functions that the Employer would include in its proposed five-facility unit.

In determining whether a petitioned-for multi-facility unit is an appropriate unit for collective bargaining when the multi-facility unit sought constitutes only a segment of the Employer's workforce, the evidence must establish that the petitioned-for unit employees possess a community of interest which is separate and distinct from the community of interest they share with employees employed at other facilities. Laboratory Corp. of America Holdings, 341 NLRB No. 140 (2004); Stormont-Vail Healthcare, Inc., 340 NLRB No. 143 (2003). As discussed below, I have concluded that the petitioned-for unit limited to employees at BCO and BDC is inappropriate for the purposes of collective bargaining since a unit limited to BCO and BDC is an arbitrary grouping of employees inasmuch as the evidence fails to establish that the employees at these facilities have a separate and distinct community of interest from other order filling process employees at ERC, ESC and FSC. Accordingly, I have issued an Order dismissing the petition.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

## **I. OVERVIEW OF OPERATIONS**

As discussed previously, the Employer is in the business of selling men's and women's apparel and home products through mail and telephone orders and via the Internet. As noted, the Employer does not manufacture any of these products but rather purchases products from vendors and sells them to the public. The Employer's production process is the filling of customer orders and responding to customer inquiries with respect to the above-described merchandise at its five facilities located in Western Pennsylvania.<sup>5</sup> In 2003, the Employer

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<sup>5</sup> BDC is located 5.7 miles from BCO, 51.5 miles from ERC, 54.5 miles from ESC and 44.5 miles from FSC.

received over 5.2 million telephone orders, over 5.5 million mail orders, and over one million internet orders.<sup>6</sup>

The Employer is organized around departments, rather than locations. As a result, multiple departments are located within each facility.<sup>7</sup>

The Employer is under the overall supervision of president and chief executive officer J. E. Zawacki and is basically divided into two major divisions, each with a number of departments. The two major corporate divisions are the Menswear, Home & Marketing Division and the Operations & Administration Division, which is under the direction of senior vice president T. P. McKeever. Fulfillment employees, maintenance employees and customer service employees all work in this division.<sup>8</sup>

Reporting to McKeever are various department vice presidents, including vice president fulfillment, R. A. Scalise<sup>9</sup>, vice president customer services, S. M. Blair, vice president corporate facilities planning, J. H. Smith and director of personnel (human resources) Rodney T. Henry.

As noted, the Petitioner seeks to represent all fulfillment department employees employed at BDC. The vast majority of employees who are employed in the fulfillment or warehouse department work at BDC in various warehouse, stocking and pulling and order filling functions. These employees either work in the stock order finishing/packing/shipping subdepartment located in the North Building at the BDC or in the warehouse/receiving subdepartment in the South Building at BDC. Both of these subdepartments are under the supervision of a subdepartment manager located at BDC who reports to the fulfillment department's director of operations, Tim Harlin, who reports to Scalise. There are also

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<sup>6</sup> The Employer also receives, on an annual basis, over 10 million other inquiries about its products.

<sup>7</sup> In view of the Employer's organizational structure, there is no single plant manager at any of the Employer's facilities responsible for the overall supervision of the facility.

<sup>8</sup> As discussed below, the only employees sought herein not employed in the Operations & Administration Division are credit management department employees and information services department employees.

<sup>9</sup> Scalise maintains his office at BDC.

approximately 50 quality assurance employees who work in the South Building who report to the quality assurance manager who reports to Scalise. The parties are in agreement that the employees in these two subdepartments and the quality control employees are properly included in the unit. Each of the aforementioned subdepartments has various lower level managers and supervisors who report to the subdepartment manager. There are approximately 50 of these individuals working at BDC whom the parties agree should be excluded from the unit as supervisors within the meaning of the Act.

Other fulfillment department employees work at ERC in merchandise returns.<sup>10</sup> These employees are responsible for processing merchandise returned by the customer; opening, inspecting and packing merchandise; processing 65% of the returns to the customers' accounts (35% are processed by the customer service department at BCO); and either returning defective merchandise to the manufacturer or shipping the returned merchandise to BDC for warehousing. These employees report to various supervisors at the ERC who in turn report to the merchandise returns subdepartment manager who reports to the fulfillment department's director of operations.

As noted, approximately 590 petitioned-for fulfillment department employees work at BDC and 230 fulfillment department employees work at ERC. The Petitioner does not seek to represent the ERC fulfillment department employees. There are no fulfillment department employees employed at BCO, ESC or FSC.

Approximately 50 corporate facilities planning or maintenance department employees work at BDC and 29 work at BCO in various job classifications, including janitorial, building security, and craft positions (e.g. electricians, carpenters, mechanics). These employees report to various managers and supervisors at each facility who in turn report to Smith. A small

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<sup>10</sup> In 2001, merchandise returns was relocated from BDC to a new facility– the ERC.

number of maintenance department employees work at ERC and ESC.<sup>11</sup> No maintenance department employees are permanently assigned to FSC.

The credit management department operations are located primarily at BCO and deal with customer credit issues. At BDC, the credit management department employs six first class mail operators. These employees mail all documents sent to customers. Approximately 21 credit management department employees work at BCO in collection-clerk, credit analysts, telephone analysts and other positions. The credit management department is not part of the Operations & Administration Division, but rather is under the overall supervision of senior vice president and chief financial officer B. J. Flanagan. Flanagan, as a senior vice president, reports directly to Zawacki. There are no credit management department employees at ERC, FSC or ESC.

The Employer's information services department (ISD), whose operations are primarily based at BCO, has a small number of employees at BDC. This department, which is under the supervision of vice president and chief information officer, M. A. Rowe, is responsible for assisting in the processing of customer orders and all communications with customers and customer payments. Rowe reports directly to Zawacki. At BDC, the ISD operates a print room employing three computer printer operators. The print room receives information from BCO and prints all documents associated with the order filling process and all documents mailed to customers. No computer printer operators are employed at other facilities. The ISD also employs two desktop support technicians at BDC and BCO, respectively. These employees maintain individual computers and CRTs. One desktop support technician is also at ERC. The Petitioner would exclude the ERC desktop technician from the petitioned-for unit. In addition, there are other classifications of ISD employees employed at BCO in computer operations and data clerk positions. No ISD employees are employed at ESC or FSC.

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<sup>11</sup> Two baler operators, a mechanic and a janitor work at ERC, while two janitors work at ESC.

Finally, the Petitioner would include in its proposed two-facility unit all customer service department employees employed at BCO. The customer service department receives customer orders by mail, telephone, fax and internet, processes customer orders, completes return processing from the ERC and processes customer payments. The customer service department has operations at BCO, ESC and FSC. Department headquarters are located at BCO. Only customer service department employees are employed at ESC and FSC.<sup>12</sup>

BCO is the corporate headquarters for the Employer's entire operation. In addition to a number of departments not an issue herein, the credit management and the information services departments maintain the base of their respective operations at BCO.

In summary, the Employer, contrary to the Petitioner, would include in its proposed five-facility unit all customer service department employees at ESC and FSC, all fulfillment department employees at ERC, the maintenance department employees at ERC and ESC, and the desktop support technician at ERC.

## **II. OVERVIEW OF LEGAL PRECEDENT**

In determining whether a petitioned-for multi-facility unit is appropriate, the Board evaluates the following factors: employees' skills and duties; employees' terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history. Laboratory Corp. of America Holdings, supra; Stormont-Vail Healthcare, Inc., supra; Bashas', Inc., 337 NLRB 710 (2002); Alamo Rent-A-Car, 330 NLRB 897 (2000). In evaluating these factors, the Board finds that a petitioned-for unit limited to a segment of the employer's facilities is an arbitrary grouping of employees when the evidence fails to establish that the employees in the petitioned-for unit share a community of interest distinct from that shared with employees at other facilities. Accordingly, the unit sought will be found inappropriate for collective bargaining. If the facilities in the unit sought conform to one of the employer's administrative functions or organizational

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<sup>12</sup> As noted, a small number of maintenance department employees are also employed at ESC.



groupings or are located within a coherent geographic grouping, the unit may constitute an appropriate multi-facility unit, particularly if the facilities in the unit sought have common supervision, substantial functional integration and significant interchange. In these circumstances, the Board may find that the unit constitutes a sufficiently stable collection of facilities forming a cohesive, coherent unit. E.g. Burlington Food Store, Inc., 235 NLRB 205, 206 (1978); See's Candy Shops, Inc., 202 NLRB 538 (1973).

In this case, the Employer argues that the unit sought is inappropriate because its operations are so highly and functionally integrated that only the five-facility unit it proposes is appropriate.

In assessing the appropriateness of a unit limited to BCO and BDC, the Board's decision in Neodata Product/Distribution, 312 NLRB 987 (1993) is instructive, notwithstanding the fact that in that case the issue involved the Board's single-facility presumption analysis.

In Neodata the employer's production process consisted of operations similar in nature to the Employer's operation, i.e., the processing and filling of customer orders. In Neodata, the employer maintained facilities located three miles apart. Employees at one facility (clerical employees, loading dock employees and mailroom employees) received and processed orders for the delivery of products, in what was referred to as the office facility, while employees at the petitioned-for "warehouse" facility packaged, invoiced and shipped the ordered product to the customer, and entered information into the computer for the billing process, which was handled by employees at the office facility. In concluding that the only appropriate unit consisted of employees at both facilities, the Board concluded that employees at each facility participated equally and fully at various stages of the order-filling process.<sup>13</sup>

In this regard, the Board relied on the following factors in concluding that the single-facility presumption had been overcome: (1) employees at both facilities had frequent personal,

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<sup>13</sup> The warehouse facility employed approximately 90 unit employees, while 660 such employees were employed at the office. The employer also had a facility 90 miles away which the employer did not seek to include in its proposed multi-location unit.

telephonic and facsimile contact with each other and used the employer's central computer system to advise each other of the availability of client products, shipping information and other related data; (2) many functions and skills performed at both locations were virtually identical; (3) some clerks (inventory supply clerks) at both locations were supervised by the same individual and performed essentially the same functions (the storage and handling of client products and the monthly inventory of clients' stock using identical equipment to perform this function); (4) certain employees at the office facility (loading dock employees and mail processing employees) performed warehouse type duties similar to the employees working in the warehouse facility; (5) clerks from the office were sent to the warehouse several times a month to perform physical inventory audits of client merchandise; (6) employees were able to bid on vacancies and transfer between facilities, and during the preceding six-month period, 37 employees made such transfers; (7) employees at both facilities received the same fringe benefits and the same time for breaks and meals, were subject to the same employee handbook, were under the same employee appraisal system, attended the same employee quarterly meetings, and attended employee picnics and annual award banquets; (8) newly hired employees took part in the same orientation program; and (9) control over the daily operation and labor relations policy at both facilities rested with the employer's director of operations in conjunction with its manager of personnel.

Based upon the above, the Board concluded that a symbiotic relationship existed between the two facilities as part of the employer's single "order flow process", resulting in the presumption favoring a single-facility unit limited to the warehouse facility being rebutted.<sup>14</sup>

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<sup>14</sup> In reaching its conclusion that the single-facility presumption had been rebutted, the Board cited its decisions in Scholastic Magazines, Inc., 192 NLRB 461 (1971) and Avon Products, 250 NLRB 1479 (1980) where in each case the petitioned-for unit of warehouse employees was found to be inappropriate and a wall to wall unit of all facility employees engaged in the order flow process was found to be the smallest appropriate unit. Although these cases did not involve the application of the Board's single-facility presumption, the Board nevertheless relied on these cases, in part, to buttress its conclusion in Neodata that the two facilities constituted integral and indispensable parts of a single "order flow process", 312 NLRB at 988. See also, S & S Parts Distributors Warehouse, 277 NLRB 1293 (1985); Barbara George Collection, 273 NLRB 1239 (1984).

In Case 6-RC-8922, the Region issued a Decision and Direction of Election in 1981 involving this employer where an employer-wide unit of all employees engaged in the order flow process was found

### **III. THE EMPLOYER'S ORDER FLOW PROCESS**

The Employer, through its ISD department, utilizes a sophisticated automated computer system which processes the company's business transactions and other information needs, including the printing of documents at BDC. The computer system provides a key link in the merchandise procurement and order filling process between the customer service and fulfillment departments.

Initially, business units at BCO which comprise the Men's Apparel & Home Products Division purchase merchandise from manufacturers for inventory needed to fill customers' orders. Purchase orders are sent from the business units to BDC, where fulfillment employees in various subdepartments enter data into the computer system with respect to the inventory (e.g. warehouse location of the merchandise, packing information, product specifications).<sup>15</sup>

After the purchase order process is complete, merchandise is received from the vendor at the receiving area in the BDC South Building, where information on the manifests accompanying the product is entered into the computer system by data control clerks. The computer system makes decisions about where the product should be delivered within the facility. Product is then sent via a conveyor to tally clerks who work with CRTs to prepare labels specifying where the product is to be sent at BDC (quality control, warehouse, or fill orders). Material handlers use the information on the labels to send the product to its designated location at BDC. If the merchandise is not needed immediately, it is sent to bulk storage. From bulk storage, it can be transferred to order filling as necessary.

The order filling process for merchandise starts at BCO, ESC or FSC, where customer orders are turned into data through use of the computer system. Customer service department

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appropriate. At that time, the Employer's operation consisted of two facilities, in Warren and Irvine. The union in that case sought to represent a multi-facility unit of warehouse and maintenance employees and mail room employees, and excluding those employees engaged in customer service type functions. The Region found that the broader unit, including customer service type employees, was the smallest appropriate unit based upon the highly integrated nature of the Employer's operations.

<sup>15</sup> Packing specifications for the inventory are transmitted through use of the computer system to ERC so that ERC can properly pack any customer returns.

employees at BCO handle and complete customer orders, inquiries, credit issues, payments and returns by mail, telephone or internet. The ESC and FSC customer service department employees primarily handle telephone orders.<sup>16</sup> In addition, FSC handles batch mailing, which is normally performed at BCO, six months of the year during the busy season.

Mail is received at BCO after being initially processed at BDC. Mail can include customer payments, orders or inquiries. There, order editors extract the contents from the envelope, check the order for completeness, categorize it by content and prepare the mail for batching and sorting. From editors, documents are then sent to batching, correspondence or credit operations. All of the operations take place at BCO. Batching and correspondence are part of the customer service department while credit operations is part of the credit management department.

Batching matches up similar types of orders or inquiries. The orders are then carried to order dispatch, where like batches are collected together and the orders are entered into the computer system. As noted, during the busy season, six months of the year, some mail orders are sent from BCO by shuttle truck to FSC for data entry.

Telephone orders are, as noted, taken at BCO, FSC or ESC, depending on which 800 number the customer calls. At BCO, phone clerks' primary function is answering customer inquiries. Phone clerks at ESC and FSC primarily handle order calls and simple customer inquiries. Each call center performs basically the same function with employees using similar phone equipment and having access to the same customer information database. Phone clerks enter data for the customer order into the customer database. This information is used by ISD at BCO, and later at BDC, to generate order documents at BDC to fill the order.

Orders can also be placed through the Employer's website. These orders are processed by ISD at BCO with a check through the credit management department. Customers may also

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<sup>16</sup> Ninety-five percent of all telephone orders and inquiries are handled by either ESC or FSC, with five percent being handled by BCO.

make e-mail inquiries. Those inquiries are handled by customer service representatives at both ESC and BCO.

Throughout the day, customer service employees at BCO, and at times at FSC, enter data into the computer system for orders.<sup>17</sup> After computer programs are run at BCO, print files are transmitted across a communication line to a BDC print server. ISD employees in the print room at BDC print all documents associated with the order process and inquiry response process (e.g. customer order summaries, product status for order pickers, UPS labels). ISD also runs programs that provide information from BDC to BCO in the form of reports that enable customer service representatives to provide information to customers on the availability of product and other related issues.

The documents are sent from the ISD print room to order preparation and pack and ship in the fulfillment department. Order pickers use the documentation to go where the product is located, select it, put a sticker on it, and place it on a tote that is sent on a conveyor belt to the North Building for packing. In the packing area, the packer checks the order and determines how to pack it. After packaging, the order is sent to shipping, where the merchandise is prepared for shipment to the customer.

About 15 percent of all shipments, about 2 million a year, are returned. Customer returns are received at ERC and processed by ERC employees. ERC employees scan customer files on CRTs and enter data into the customer database to accomplish what the customer wants, e.g., a credit card or cash refund, or an exchange. If a customer wants an exchange, that instruction is entered into the computer system and a new order is generated using the ordering system.<sup>18</sup>

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<sup>17</sup> During off hours, ISD operators at BCO run over 850 programs that batch orders together for filling and that generate over 135 printouts to enable orders to be filled and customer inquiries to be answered.

<sup>18</sup> If refunds are requested by the customer, ERC employees perform the data entry to credit customers' accounts. More complicated returns are sent to customer service at BCO by inter-building shuttle truck for processing.

With respect to returned merchandise, ERC handles the product in a manner similar to the way new inventory is handled at BDC. ERC inspects the product, determines final disposition and either returns the product to stock or returns defective merchandise to the manufacturer.<sup>19</sup> About 88 percent of the merchandise passes inspection and can be restocked. The stock is either stored in a warehouse at ERC or sent by truck to BDC. Approximately two truckloads of stock move each day from ERC to BDC, where the merchandise is placed back into the order filling system. The merchandise returned to BDC is based on the Employer's need to replenish inventory or to fill orders. Merchandise initially stored at ERC is sent to BDC when ERC is notified through the computer system that BDC needs that merchandise.

#### **IV. ANALYSIS**

The issue presented in this case is whether, when all the relevant evidence is examined, the order filling process employees at BCO and BDC share a separate and distinct community of interest from those at ERC, ESC and FSC. For the reasons set forth below, I find that the unit sought is an arbitrary grouping of employees and is not appropriate for collective bargaining. More specifically, BCO and BDC do not comport with any Employer administrative or organizational grouping; there is no common management for these two facilities alone; there is substantial functional integration as well as employee interchange with the other facilities; BDC and BCO do not constitute a coherent geographic grouping; the terms and conditions of employment of the included employees are the same as those of the excluded employees; and there is no history of collective bargaining for the employees sought by the Petitioner.

Initially, as set forth above, the record affirmatively establishes that employees at all five facilities perform integrally related functions in the Employer's order flow process, a factor which undermines the appropriateness of a unit limited to BDC and BCO. Neodata Product/Distribution, supra. As noted, all facilities are linked to a central computer system which

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<sup>19</sup> As noted, prior to 2001, returns were handled at BDC. Currently, the fulfillment department budget has a line item for "returns", which includes ERC, just as it did before the returns operation was relocated to ERC.

employees at all facilities use to advise each other of the availability of merchandise, the status of orders, customer shipping information, and to change orders or other data. This electronic contact occurs most frequently between customer service representatives and certain classifications of BDC fulfillment department employees and between BDC fulfillment employees and those fulfillment department employees at ERC. It is clear from the record that employees at all locations work together to accomplish the Employer's ultimate production goals of receiving orders and thereafter assuring the prompt delivery of merchandise to customers.

It is significant that the Employer's operations are not administered on a facility basis. Instead, the Employer's operations are administered on a departmental basis, and departments cut across facilities. As a result, vice presidents are responsible for and oversee those portions of the facilities that are part of their departments. Thus, there is no facility manager to whom all employees report at any of the facilities. Nor is there any manager who is responsible for the oversight of BCO and BDC. A wide variety of operational decisions, including decisions authorizing new hires and decisions to effectuate layoffs, are made at the department level and not by location. Budgets are prepared on a departmental, not facility, basis.<sup>20</sup> Further, at least with respect to the fulfillment department, there is central purchasing of supplies and equipment.<sup>21</sup>

In addition, the Employer's human resources function is under the overall supervision of Director of Personnel and Associate Relations Henry, who is responsible for oversight of staffing, associate relations and internal counseling, and counseling of managers and supervisors at all locations. Reporting to Henry are three personnel representatives who have day-to-day responsibility for the human resources function. Roseann Thompson is located at

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<sup>20</sup> The vice president for each department determines shift times for each facility in which the department has operations.

Scheduling for the phone centers at BCO, FSC and ESC is handled centrally by a Call Center Scheduler located in BCO. The scheduler monitors call volume, and the network central manager then has the authority to authorize overtime or to have employees leave early.

<sup>21</sup> The BDC fulfillment department orders all supplies for ERC pursuant to ERC's request. These supplies are delivered to ERC by shuttle truck from BDC.

ERC, with responsibility for ERC, ESC and FSC. Daniel Blair is responsible, inter alia, for BCO. Mary Ann Zigler, whose office is located at BDC, is responsible for the entire BDC facility.

Personnel files for all employees are centrally maintained at BCO. Human resource policy is addressed, reviewed and formulated on a corporate-wide basis by the Employer's personnel committee, which is composed of human resource personnel and various managers from the various facilities.

Each department vice president is assisted in his labor relations responsibilities by a personnel representative from the Employer's Human Resources department. Among other duties, these vice presidents determine, in conjunction with Human Resources, the appropriateness of new or vacant positions, and authorize, again in consultation with Human Resources in order to ensure, in part, that corporate-wide progressive discipline guidelines have been met, suspensions or terminations recommended by immediate and/or intermediate department supervision.<sup>22</sup> At BDC, for example, Ms. Zigler is responsible for filling vacant positions. She reviews all applications and makes hiring decisions.

The Employer's Human Resources department is responsible for initiating the annual performance review process by generating a notice sent to the appropriate supervisor or manager on the employee's anniversary date. A common evaluation form is utilized on a corporate-wide basis. Supervisors and managers are trained by Human Resources in the preparation of evaluations. After the employee's immediate supervisor completes the evaluation, it is reviewed by the next level of management and then sent to Human Resources.<sup>23</sup> The immediate supervisor conducts an interview with the employee following

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<sup>22</sup> Immediate and intermediate department supervisors and managers have the authority to issue oral and written warnings.

<sup>23</sup> The Employer concedes that Human Resources reviews a particular employee's evaluation every third year and only then to ensure that the supervisor's comments are consistent with the rating. On "rare" occasions, Human Resources will send back the evaluation to the immediate supervisor to clean up any discrepancies between the rating and the accompanying comments.



completion of the evaluation process. Annual pay raises are determined by the corporate office using a pay grid and the employee's score on the annual evaluation.<sup>24</sup>

Compensation and benefits are centrally administered at BCO. All hourly employees are subject to the same set of work rules, employment policies and procedures, which are set forth in an employee handbook,<sup>25</sup> including pay practices, time off policies and fringe benefits. Vacation, sick time and personal day policies are uniform throughout the company.

Seniority is credited based on company seniority, with some exceptions where departmental seniority is used. Decisions on when to use departmental seniority are made at the vice president level and by Henry.

The Employer utilizes an electronic timekeeping system that is the central repository for all timekeeping for all locations. All non-exempt employees use the same system by swiping ID cards through a wall unit. The system tracks entitlement to, and use of vacation time, sick time and overtime. Each facility does its own time and attendance verification.

At the present time, an employee incentive program has been implemented at BDC, and is scheduled to be implemented at ERC in early summer 2004, and thereafter at the customer service centers.

All safety issues, except minor issues, are handled by employees at BCO. Human Resources runs a number of annual social events for employees, including sports tournaments. These programs are administered from either BCO or BDC. Human Resources also administers a number of company-wide programs for employees, such as a scholarship program, perfect attendance award program, employee idea program and service award program.

The Employer publishes a monthly newsletter for all employees. Employee reporters at each facility provide information to the BCO, where the newsletter is published and then

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<sup>24</sup> Employee pay levels are established by the corporate office and apply on a corporate-wide basis.

<sup>25</sup> There is one handbook for full-time employees and another for part-time employees.

delivered to each location by shuttle truck and distributed by supervisors. The newsletter serves as a conduit to announce company-wide activities.

Employee training programs are centrally developed at BCO and presented by the corporate training staff, with respect to such things as computer training, safety, fire extinguishers, defensive driver training and other matters. Corporate training facilities exist at BCO and BDC. Further, with respect to the customer service department, call team leaders at BCO, ESC and FSC are provided with leadership training either at BCO or at ESC by a corporate trainer who goes to that site. In 2003, phone clerk training for ESC occurred by an interchange of BCO and ESC employees traveling to each site for two-week periods. New customer service employees are provided with orientation training on site, but the training is the same regardless of location.

In summary, based upon the above, it is clear that the petitioned-for unit does not conform to any administrative function or organizational grouping or that the employees at these two facilities share common supervision separate from employees at other facilities.

The record further establishes that many of the skills used and functions performed by the petitioned-for employees and those employed at other facilities are virtually identical, depending on their particular job classification. This consideration buttresses the conclusion that employees in the unit sought do not enjoy a community of interest separate from employees at the other three facilities. Thus, BDC fulfillment department employees and ERC fulfillment department employees perform essentially the same job functions. In addition, the maintenance employees at all locations, depending on the job classification, also perform identical job duties. Thus, the janitors at ESC and ERC do the same job utilizing the same skills as the janitors at BCO and BDC. The baler operators and the mechanic at ERC perform the same job functions as the baler operators and mechanics at BDC. Further, all customer service phone clerks at BCO, FSC and ESC perform the same functions. Finally, employees at all locations routinely and regularly perform computer scanning and data entry work with respect to various aspects of the order flow production process.

There remains for consideration the Petitioner's contention that the close geographic proximity of the BCO and BDC, approximately six miles apart, together with the fact that substantial employee interchange occurs between the two facilities on a regular basis, warrants the conclusion that BCO and BDC constitute an appropriate unit.

The record demonstrates that the Employer's production goals are achieved in part by the fact that many employees at BCO, who function as order editors, credit management employees, customer service representatives and in other positions, are cross-trained in various fulfillment department jobs. As a result, these BCO employees are regularly assigned on a temporary basis to BDC to assist in the processing and shipping of customer orders.

In this regard, the Employer presented computerized records for 2003 detailing the temporary transfers on a monthly basis to and from the BDC fulfillment operation. These records set forth the employee's name, facility and department assigned, facility and department temporarily assigned, and the number of hours worked. The record shows that there were approximately 385 temporary assignments involving employees whom the Employer would include in its multi-facility unit from BCO to BDC, for a total of approximately 9960 hours. In the vast majority of these temporary assignments (over 90 percent), BCO employees were assigned to the finishing/packing subdepartment in the North Building to assist in filling order backlogs. The average length of these temporary assignments was approximately 25 hours.<sup>26</sup> Presumably, the high level of temporary assignments of employees from BCO to BDC is due in part to the geographic proximity of the two facilities.<sup>27</sup> No BDC fulfillment department employees were assigned to BCO or any other facility during 2003.<sup>28</sup> However, the record also reflects that temporary assignments involving employees at ERC, ESC and FSC to BDC

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<sup>26</sup> Temporary assignments ranged from a low of 4 hours to a high of 71 hours.

<sup>27</sup> Beginning in early December 2003, through mid-January 2004, the record reveals that eight customer service representatives at BCO were temporarily laid off at BCO and transferred into BDC unit positions for a one to two month period prior to returning to BCO in customer service positions.

<sup>28</sup> The one exception being that in 2003, two employees from BDC worked at FSC for a total of 45 hours.

occur,<sup>29</sup> as do temporary assignments involving employees to and from the four facilities other than BDC.<sup>30</sup>

With respect to the maintenance department, the record shows that interchange occurs between BDC and BCO maintenance employees and that BCO and/or BDC maintenance employees temporarily work at FSC, ERC and ESC on an as-needed basis. Thus, since February 2002, the Employer undertook four major projects at various facilities which required the utilization of maintenance department employees from other facilities. Thus, the record reveals that four craft maintenance employees from BCO worked at BDC for a total of 324 hours, with one of these employees, carpenter Rusty Ziegler, working 219 hours.<sup>31</sup> Between February 1, 2002, until September 27, 2002, six craft maintenance employees from BCO and four from BDC worked at FSC relocating the operations from one building to another. Two mechanics from BDC each worked 345 hours at FSC during this period, while a BDC painter and a groundskeeper worked 16 hours and 48 hours, respectively. BCO maintenance employees worked over 2700 hours at FSC during this period.

In addition to special projects, the record reveals that janitors from BDC perform the janitorial work at FSC. The record, however, does not reveal how often this occurs. Further, a groundskeeper from BDC travels to FSC each Wednesday to do the “weekly testing of the generator” and other jobs that need to be done. Mechanics who work at BDC will travel to ERC

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<sup>29</sup> Thirteen temporary assignments encompassing 195 hours were made with ERC employees being assigned to the North Building finishing department and 10 assignments encompassing 40 hours were made involving either FSC or ESC employees being assigned to BDC. ERC employees usually work at BDC on a temporary basis on the weekends.

<sup>30</sup> The record reflects that only one permanent transfer occurred in 2003 between the petitioned-for facilities and non petitioned-for facilities. However, permanent interchange is a less significant indication of community of interest, and thus is given less weight by the Board in deciding unit scope issues. See e.g. Red Lobster, 300 NLRB 908, 911 (1990). Nine permanent transfers occurred between BDC and BCO in 2003.

<sup>31</sup> This project involved the relocation of the packing or finishing department from the South Building to the North Building.

on an as-needed basis to work on conveyors and mechanical sorters. Forktruck mechanics at BDC work as well at ERC on an as-needed basis.

Based upon the above, it is clear that although the majority of employee interchange occurs between BCO and BDC employees, there is nevertheless regular interchange between the employees at the petitioned-for facilities and the excluded facilities. In addition, although BDO and BDC are only six miles apart, it cannot be concluded, in light of all the factors and circumstances set forth above, that BDC and BCO constitute a coherent geographic unit. EDC, ERC and FSC are all located within 45 to 55 miles of the two Warren-area facilities. These excluded facilities are in sufficient proximity to BDC and BCO to support a finding that the petitioned-for unit is not appropriate. See Laboratory Corp. of America Holdings, supra, at slip op. p.5 (excluded facility located within 25 miles of petitioned-for facilities); Bashas', Inc., supra, at 711 (excluded facility located within 32 miles of the petitioned-for facilities considered to be "in close geographic proximity" to those facilities).

In sum when all the relevant evidence is examined, I find that it establishes that the petitioned-for unit is inappropriate for collective bargaining since the unit sought is an arbitrary grouping of employees inasmuch as the evidence fails to establish that the employees in the unit share a community of interest separate and distinct from that shared by employees in all of the Employer's facilities. Laboratory Corp. of America Holdings, supra; Bashas', Inc., supra. I shall therefore dismiss the petition in the instant matter.<sup>32</sup>

## **V. FINDINGS AND CONCLUSIONS**

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

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<sup>32</sup> In its brief, the Petitioner clearly stated that it did not wish to proceed to an election in a unit broader than the petitioned-for unit.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner claims to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

#### **VI. ORDER**

**IT IS HEREBY ORDERED** that the petition filed herein be, and it hereby is, dismissed.

#### **VII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST (EDT), on August 4, 2004. The request may **not** be filed by facsimile.

Dated: July 21, 2004

/s/ Gerald Kobell

Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD  
Region Six  
Room 1501, 1000 Liberty Avenue  
Pittsburgh, PA 15222